

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

FEDERAL TRADE COMMISSION,
STATE OF CALIFORNIA,
STATE OF COLORADO,
STATE OF ILLINOIS,
STATE OF INDIANA,
STATE OF IOWA,
STATE OF MINNESOTA,
STATE OF NEBRASKA,
STATE OF OREGON,
STATE OF TENNESSEE,
STATE OF TEXAS,
STATE OF WASHINGTON,
and
STATE OF WISCONSIN,

Plaintiffs,

v.

SYNGENTA CROP PROTECTION AG,
SYNGENTA CORPORATION,
SYNGENTA CROP PROTECTION, LLC,
and
CORTEVA, INC.,

Defendants.

C.A. No. 22-CV-828

**SYNGENTA’S MOTION TO
DISMISS THE
AMENDED COMPLAINT**

Defendants Syngenta Crop Protection, LLC, Syngenta Crop Protection AG, and Syngenta Corporation (collectively, “Syngenta”), hereby move pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss all claims against them in this action.

In support of this Motion, the Syngenta Defendants state as follows:

1. On September 29, 2022, the Federal Trade Commission and ten states filed a complaint in this action (the “Complaint”). (ECF No. 1).

2. The Complaint asserted fourteen counts against Syngenta: violations of Section 5 of the FTC Act (Count I), Section 3 of the Clayton Act (Count II), Sections 1 and 2 of the Sherman Act (Counts III and IV), and state antitrust or consumer protection laws of California, Colorado, Illinois, Indiana, Iowa, Minnesota, Nebraska, Oregon, Texas, and Wisconsin (Counts V-XIV).

3. On December 12, 2022, Syngenta moved to dismiss the Complaint under Rule 12(b)(6). (ECF No. 64).

4. On December 23, 2022, the Federal Trade Commission and twelve states (collectively, “Plaintiffs”) filed an amended complaint in this action (the “Amended Complaint”). (ECF No. 79). The Amended Complaint reasserted the fourteen counts of the Complaint (as amended, Counts I-XII, XIV, and XVI) and added two counts under the state antitrust laws of Tennessee and Washington (Counts XIII and XV, respectively).

5. There are several grounds supporting dismissal of Plaintiffs’ federal claims under the FTC Act, Clayton Act, and Sherman Act (Counts I-IV). First, the Amended Complaint fails to state a claim because under well-developed federal antitrust law, above-cost market share rebate programs that lack coercive non-price features, such as Syngenta’s rebate program as alleged, are pro-competitive and lawful. Second, the Amended Complaint fails to state a claim because it does not allege facts showing the requisite harm to competition. Finally, the Amended Complaint fails to state a claim because it pleads an implausibly narrow product market.

6. Plaintiffs’ state law claims also fail in their entirety. Plaintiffs’ state antitrust law claims (Counts V-XVI) fail for the same reasons as Plaintiffs’ federal claims

because the state antitrust statutes at issue are generally interpreted consistently with federal antitrust law. Plaintiffs' claims under Indiana's consumer protection law (Count VIII) and Iowa's consumer protection law (Count IX) fail for reasons specific to those statutes. Alternatively, if the Court dismisses the federal claims, it can decline jurisdiction over the state claims.

7. Finally, Plaintiffs fail to state a claim against Syngenta Crop Protection AG or Syngenta Corporation because the allegations do not cognizably connect either entity to the challenged rebate program.

8. In addition, Syngenta joins the arguments set forth by co-defendant Corteva, Inc. to the extent they apply to Syngenta, including but not limited to any constitutional arguments.

For the reasons stated herein and in Syngenta's brief in support of this Motion, Syngenta respectfully request that all claims against them be dismissed in their entirety and with prejudice.

This the 13th day of January 2023.

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